

FAMILY LAW

Cases and Materials

Volume II

**Brenda Cossman, Carol Rogerson and Martha Shaffer
Faculty of Law
University of Toronto**

2004-2005

Prepared with the assistance of Andrea Sanche

* * *

*These materials are distributed solely for classroom use
by students in the Faculty of Law, University of Toronto*



FAMILY LAW

Cases and Materials

Volume II

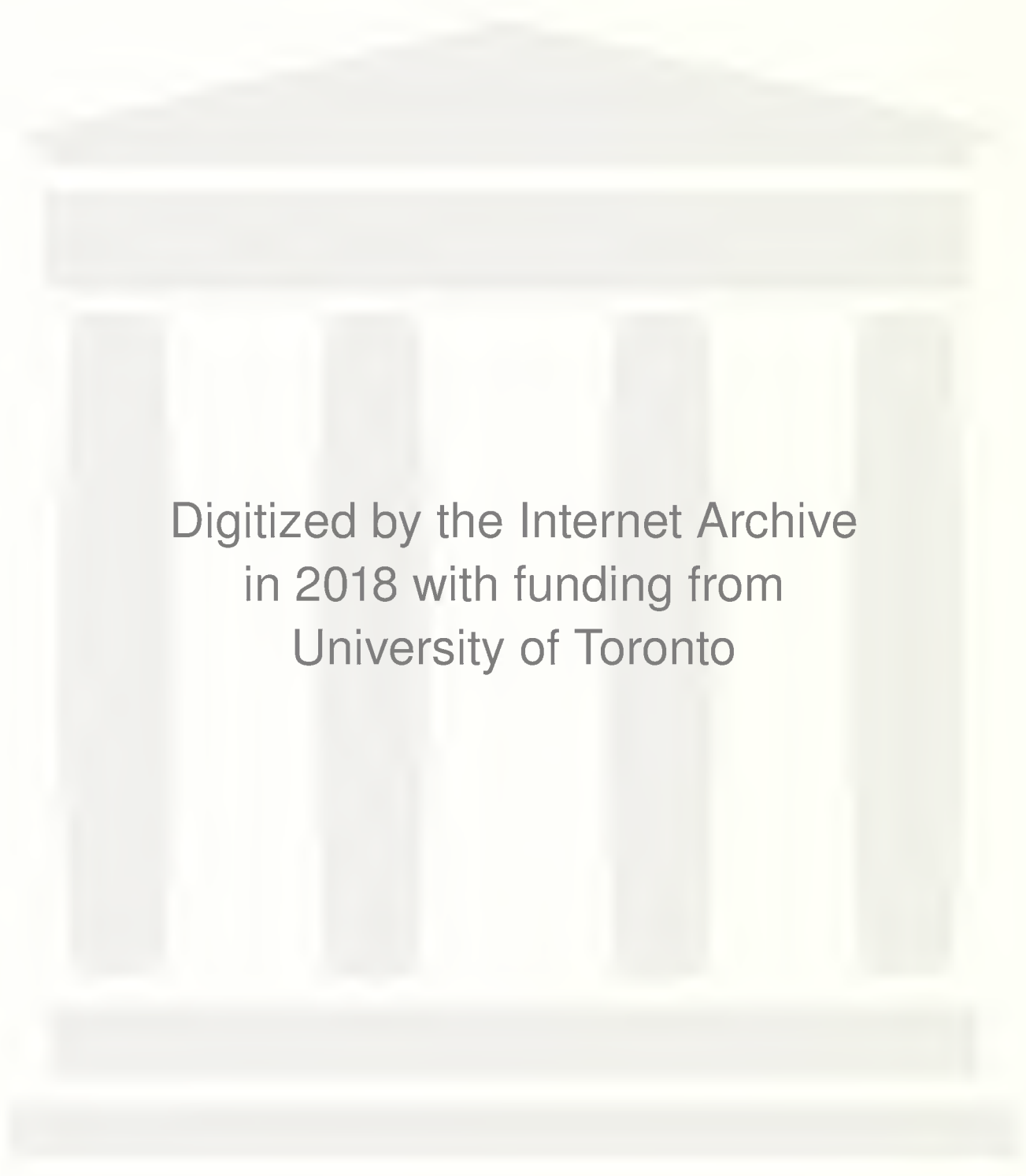
**Brenda Cossman, Carol Rogerson and Martha Shaffer
Faculty of Law
University of Toronto**

2004-2005

Prepared with the assistance of Andrea Sanche

* * *

*These materials are distributed solely for classroom use
by students in the Faculty of Law, University of Toronto*



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

FAMILY LAW

Table of Contents

Volume II

Page No.

V. MATRIMONIAL PROPERTY

A. Historical Overview

(a) Common Law

OLRC, *Report on Family Law, Part IV: Family Property* 281

(b) Trust Doctrine

LRCC, *Family Property* 284

Note: *Murdoch v. Murdoch* and *Rathwell v. Rathwell* 286

Pettkus v. Becker 289

Globe and Mail, “Woman’s Suicide Ends Fight for Rights” 297

Globe and Mail, “Ontario Fee System Cited in Woman’s Legal Woe” 298

Globe and Mail, “Payout ends tragic story of farm wife’s legal battle” 299

Note: *Sorochan v. Sorochan* 300

Peter v. Beblow 301

Note: Recent Cases on Constructive Trust 317

Harrison v. Kalinocha 318

Crick v. Ludwig 321

Note: *Bell v. Bailey* 327

Nowell v. Town Estate 328

Note: Legislative Reform of the Property Rights of Unmarried Cohabitants 335

Wylie v. Leclair 336

(c) Statutory Reform

Holland, “Reform of Matrimonial Property Law
in Ontario” 340

Wolfson, *The New Family Law Act* 341

B. The Family Law Act, 1986

(a) The Partnership Principle

Knetsch, “Some Economic Implications of Matrimonial
Property Rules” 345

Prager, “Shifting Perspectives on Marital Property Law” 351

Eekelaar, *Family Law and Social Policy*, “Adjustment
on Divorce” 356

Fineman, “Implementing Equality” 358

	Note: Application of Matrimonial Property Law to Aboriginal Women	362
(b)	Overview of the Family Law Act	
	Ontario Law Reform Commission, <i>Report on Family Property</i> (1993)	364
	Law Reform Commission of British Columbia, <i>Working Paper on Property Rights on Marriage Breakdown</i> (1989).....	367
(c)	Applying the FLA: Calculating the Equalization Payment	
	Goodman, “Matrimonial Property”, <i>Family Law</i> Bar Admission Course Materials	372
	<i>Skrlj v. Skrlj</i>	384
	Hovius, Sample Problems.....	389
(d)	Valuation and Valuation Date Assets	
	(i) <u>Valuation Date</u>	
	Note	391
	(ii) <u>Determining Ownership of Assets</u>	
	Fredricks, “The Ownership Conundrum”	393
	Wolfson and Corbin, “Problems of Title and and Constructive Trusts”	394
	(iii) <u>Valuation</u>	
	Hovius and Youdan, <i>The Law of Family Property</i>	396
	<i>Black v. Black</i>	399
	Goodman, “Matrimonial Property”, <i>Family Law</i> Bar Admission Course Materials.....	401
(e)	Deductions and Exclusions	
	Hovius and Youdan, <i>The Law of Family Property</i>	403
	<i>Folga v. Folga</i>	
	<i>Black v. Black</i>	410
	Note: Proposed Amendments to the <i>Family Law Act</i>	411
(f)	The Definition of Property: Professional Degrees and Earning Capacity	
	<i>Caratun v. Caratun</i>	413
	Note: The Trial Judgment in <i>Caratun</i>	420
	Note: Compensatory Support.....	423
(g)	Continued Relevance of Constructive Trust	
	<i>Kelly v. Kelly</i>	425
	<i>Rawluk v. Rawluk</i>	426
	Note: Reverse Constructive Trust	439
	Note: OLRC 1993 Recommendations	440

(h) Departures from Equal Sharing

(i) Short Marriage

<i>Futia v. Futia</i>	442
<i>Pope v. Pope</i>	444

(ii) Depletion of Assets

<i>Scott v. Scott</i>	447
Notes	450

(iii) Unequal Contributions

<i>LeBlanc v. LeBlanc</i>	453
<i>Toronto Star</i> , “A New Day in a Hard Life”	457
<i>Berdette v. Berdette</i>	459
Note: <i>Peake v. Peake</i> and <i>McInnis v. McInnis</i>	464
<i>Brett v. Brett</i>	465
Note: Tort Awards for Spousal Misconduct	469

(iv) Post-Separation Conduct and Anticipated Future Needs..... 469

(v) Reform of s. 5(6)

Note: OLRC 1993 Recommendations	472
---------------------------------------	-----

VI. THE MATRIMONIAL HOME

A. Introduction

Hovius, “The Matrimonial Home”	477
--------------------------------------	-----

B. Overview of Part II of the Family Law Act, 1986

Wolfson and Corbin, “The Matrimonial Home Under the FLA”	478
--	-----

C. Orders for Exclusive Possession

Bissett-Johnson and Holland, <i>Matrimonial Property Law in Canada</i>	483
<i>Pifer v. Pifer</i>	484
Note: <i>Bailey v. Bailey</i>	485
<i>Hill v. Hill</i>	486
Note: Exclusive Possession and Issues of Violence	490
Note: Restraining Orders	492

D. Groups Precluded from Protection

Note	492
<i>Gathering Strength: Report of the Royal Commission on Aboriginal Peoples</i> ..	494

VII. SPOUSAL SUPPORT

A. The Principles of Spousal Support

(a) The Historical Basis of Spousal Support

Eekelaar and Maclean, *Maintenance After Divorce* 498

(b) Modern Spousal Support Law—The Search for New Principles

Eekelaar and Maclean, “The Evolution of Private Law Maintenance Obligations” 499

LRCC, *Maintenance on Divorce* 500

Rogerson, “Spousal Support After *Moge*” 504

Rogerson, “The Causal Connection Test in Spousal Support Law” 505

B. Spousal Support Under the *Divorce Act*, 1985

(a) Some Preliminary Issues of Jurisdiction and Standing

Note..... 511

(b) The Rise of the Clean Break Principle and the Causal Connection Test

Rogerson, “Spousal Support After *Moge*” 513

Messier v. Delage 514

Note: The Supreme Court of Canada “Trilogy” 517

Pelech v. Pelech..... 517

Richardson v. Richardson 527

(c) The Law Shifts: *Moge v. Moge*

Moge v. Moge 535

(d) Implementing the *Moge* Compensatory Principle

Rogerson, “Spousal Support Post-*Bracklow*” 553

Elliot v. Elliot 554

Ross v. Ross 565

Note: *MacNeil v. MacNeil* 568

Leek v. Lightfoot 570

Morison v. Morison 571

(e) The Pendulum Swings Again: *Bracklow v. Bracklow* and Needs-Based Support

Rogerson, “Spousal Support Post-*Bracklow*” 576

Bracklow v. Bracklow 577

Rogerson, “Spousal Support Post-*Bracklow*” 589

(f) The Interaction of Spousal Support and Child Support; Spousal Support and the Post-Divorce Care of Children

Rogerson, “Spousal Support Post-*Bracklow*” 595

Bildy v. Bildy 595

Andrews v. Andrews 598

VIII. DOMESTIC CONTRACTS

A. Introduction: Contracting in the Family Context

<i>Balfour v. Balfour</i>	604
<i>Harper's Magazine</i> , "Conditional Love"	604
O'Donovan, "Reforming the Private" from <i>Sexual Divisions</i> <i>in Law</i>	605
Mnookin, "Divorce Bargaining: the Limits on Private Ordering"	608
Bailey, " <i>Pelch, Caron, and Richardson</i> "	611
Note: The <i>Pelech</i> Trilogy	612

B. Limits on Contracting

(a) Setting Aside Contracts: General Principles of Contract Law

Hovius, <i>Family Law</i>	614
Note: Unconscionability	615
<i>Hyldtoft v. Hyldtoft</i>	615
<i>Puopolo v. Puopolo</i>	616
<i>Lindsay v. Lindsay</i>	618
<i>Crouse v. Crouse</i>	623
<i>Rosen v. Rosen</i>	627
Majury, "Unconscionability in an Equality Context".....	629
<i>Leopold v. Leopold</i>	632

(b) Statutory Powers to Set Aside and Vary: Spousal Support

Introductory Note.....	641
<i>G.(L.) v. B.(G.)</i>	642
<i>Santosuosso v. Santosuosso</i>	648
<i>Miglin v. Miglin</i>	655

(c) Marriage Contracts and Cohabitation Agreements

<i>Slate v. Slate</i>	686
<i>Hartshorne v. Hartshorne</i>	687

